Ohio | Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Bureau of Workers' Compensation

Rule Contact Name and Contact Information:
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Regulation/Package Title (a general description of the rules' substantive content):

Payment of hospital inpatient services

Rule Number(s): 4123-6-37.1

Date of Submission for CSI Review: 10/8/2019

Public Comment Period End Date: 10/30/2019

Rule Type/Number of Rules:

- ☐ New/___ rules
- ☐ No Change/____ rules (FYR? ___)
- ✓ Amended/_1__ rules (FYR? _Yes__)
- ☐ Rescinded/____ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

   Which adverse impact(s) to businesses has the agency determined the rule(s) create?

   The rule(s):

____ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**

____ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**

____ ✓ **Requires specific expenditures or the report of information as a condition of compliance.**

____ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

   This rule establishes the fees to be paid by BWC to providers of inpatient hospital services for injured workers. For 2020, BWC is proposing to:

   - Adopt Medicare's final rule governing 2020 payment for hospital inpatient services, including but not limited to:
     - Update to the national standardized amounts
     - MS-DRG changes, ICD-10 updates, and relative weight updates
     - Quality and value related programs
   - Implement an Ohio BWC Payment Adjustment Factor (PAF) to the 2020 Medicare base service rates which will be:
     - 112.7% for MS-DRG base rate; and
     - 112.7% for direct graduate medical education (DGME) services

- Continue to follow Medicare's reimbursement approach for operating and capital outlier add-on payments and new technology add-on payments.

- Maintain payment to Medicare IPPS exempt hospitals at the hospital's allowable billed charges times the hospital's operating cost-to-charge ratio multiplied by 1.14, not to exceed seventy percent (70%) of allowed billed charges.

- Maintain that a QHP or self-insuring employer may reimburse hospital inpatient services at:

    - the applicable rate under the "MS-DRG" methodology; or
    - in the same manner as BWC reimburses Medicare IPPS exempt hospitals; or
    - the rate negotiated between the hospital and the QHP or self-insuring employer in accordance with rule 4123-6-46 of the Administrative Code.

- Maintain the per diem reimbursement option for hospital inpatient detoxification services.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

   R.C. 4121.441(A)(1)(h) , 4123.66(A)

4. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?** ***If yes, please briefly explain the source and substance of the federal requirement.***

   No.

5. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   N/A

6. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

   The purpose of the regulation is BWC's responsibility for implementing rules to effectively execute the Agency's charge to establish fees to be paid by BWC to providers of inpatient hospital services for injured workers.

   R.C. 4123.66(A) provides that the BWC Administrator "shall disburse and pay from the state insurance fund the amounts for medical, nurse, and hospital services and medicine as the administrator deems proper," and that the Administrator "may adopt rules, with the advice and consent of the [BWC] board of directors, with respect to furnishing medical, nurse, and hospital service and medicine to injured or disabled employees entitled thereto, and for the payment

therefor."

R.C. 4121.441(A) provides that the BWC Administrator, with the advice and consent of the BWC Board of Directors, shall adopt rules for implementation of the HPP "to provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies" to injured workers, including in paragraph (A)(1)(h), "[d]iscounted pricing for all . . . out-patient medical services."

Pursuant to the 10th District Court of Appeals decision in Ohio Hosp. Assn. v. Ohio Bur. Of Workers' Comp., Franklin App. No. 06AP-471, 2007-Ohio-1499, BWC is required to adopt changes to its methodology for the payment of hospital inpatient services via the O.R.C. Chapter 119 rulemaking process.

7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

   BWC will measure success by continuing to demonstrate that our fee schedules and payment strategies will maintain stability in the environment and reimbursement methodologies; ensure injured workers access to quality care; promote efficiency in the provision of quality services; and maintain a competitive environment where providers can render safe effective care.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**
   If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.
   No.

Development of the Regulation

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
   If applicable, please include the date and medium by which the stakeholders were initially contacted.

   The proposed hospital inpatient services payment rule was posted on BWC's website for stakeholder feedback on August 16, 2019 through August 30, 2019. Notice was e-mailed to the following lists of stakeholders:

   - BWC's Managed Care Organizations
   - BWC's Medical Services Division's medical provider stakeholder list
   - BWC's Healthcare Quality Assurance Advisory Committee
   - Ohio Association for Justice
   - Employer Organizations
     - Council of Smaller Enterprises (COSE)
     - Ohio Manufacturer's Association (OMA)

- National Federation of Independent Business (NFIB)
- Ohio Chamber of Commerce

- BWC's Self-Insured Division's employer distribution list
- BWC's Employer Services Division's Third Party Administrator (TPA) distribution list.

In addition, an overview of the fee schedule proposal was presented to the Director of Health Economics and Policy at the Ohio Hospital Association (OHA) on August 5, 2019.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Please see the provider stakeholder feedback grid.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

BWC's hospital inpatient fee schedule is based largely on Medicare's inpatient prospective payment system (IPPS). The Medicare IPPS is fully evaluated and updated yearly to ensure appropriate reimbursement levels to hospitals. During the annual fee schedule review, BWC historical claims data is modeled against Medicare annual reimbursement changes to determine the proposed impact to BWC and to determine if adjustments need to be made to BWC payment adjustment factors. If BWC determines that a CMS change will undermine BWC goals of maintaining stability in the environment, ensuring injured worker access to quality care, promoting efficiency in the provision of quality services and maintaining a competitive provider network, then BWC will adjust the payment adjustment factor. In addition, BWC researches similar payers of these services and other states' workers' compensation programs and data for analysis and comparison. We use our own historical data to determine financial and operational impacts and injured worker access to care.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

None. BWC is required to develop and promulgate a statewide workers' compensation reimbursement methodology for providers of medical services to injured workers including hospital inpatient facilities.

13. Did the Agency specifically consider a performance-based regulation? Please explain. ***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

No. The fee schedule itself is considered a performance-based regulation as payment is made when services are delivered. The wide variety of services reimbursed allow for providers to determine the best course of action and group of services which will allow effective treatment and outcomes for injured workers experiencing a workplace injury.

14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

These rules are specific to BWC, and reimbursement for hospital inpatient services in that program. Since BWC is the only state agency that administers workers' compensation in Ohio, there is no duplication between these rules and other rules in the Ohio Administrative Code.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

BWC has established a repeatable procedure by which all of our medical provider fee schedules are implemented. These procedures include documentation of fee schedule changes, files and other necessary information to our billing vendor to ensure the fee schedule is implemented efficiently, accurately and in a timely fashion. BWC's system contains edits and reports to ensure consistent and accurate application of the rule.

The fee schedule is also made available publicly via www.bwc.ohio.gov to all employers and third-party administrators for download for use in their system. Finally, affected BWC employees and managed care organization staff is educated on rule changes and process/policy impacts to ensure the regulation is applied consistently.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community; and

The impacted business community consists of the hospitals that provide inpatient care to injured workers and self insured employers that also administer this rule.

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and

Implementation of fee schedule changes is a necessary part of yearly methodology updates for both hospitals and self insuring employers. Because this methodology is largely based on Medicare, both hospitals and self insuring employers will realize minimal adverse impacts. The adverse impact to the self insured employers will be employer time and/or reimbursement business expense for programming and executing the fee schedule changes. The adverse impact to hospitals will be the cost of hospitals to incorporate relevant changes into the hospitals' billing

system.

c. **Quantify the expected adverse impact from the regulation.**
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

Implementation of fee schedule changes is a necessary part of yearly methodology updates for both hospitals and self insuring employers. Because this methodology is largely based on Medicare, both hospitals and self insuring employers will realize minimal adverse impacts. It is estimated that self insuring employers and hospitals would require less than 10 hours of programming time in order to comply with this rule.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The intent of this rule is to ensure access to quality health care for all Ohio employers' workers who experience a workplace injury. It is essential that appropriate and timely review of the fee schedule with relevant modifications is implemented to create a competitive reimbursement level for these services. Alternative methodologies detailed in the rule provide flexibility in hospital reimbursement for self insured employers.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

This fee schedule is applied equitably across all hospitals. However, there is also the ability for hospitals to negotiate alternative reimbursement with BWC's managed care organizations and self insuring employers when appropriate.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There are no fines or penalties for paperwork violations under these rules.

20. What resources are available to assist small businesses with compliance of the regulation?

BWC posts information regarding the inpatient fee schedule on the BWC website at www.bwc.ohio.gov, including the Billing and Reimbursement Manual which can be a source of

fee schedule, coding, billing and reimbursement information. Providers rendering services contained within the fee schedule can also contact Managed Care Organization staff, BWC's Provider Relations Business Area or Medical Services Fee Schedule Policy Unit staff for personal assistance with billing issues.